

Exact

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Federal Trade Commission
CAN-SPAM Act
Post Office Box 1030
Merrifield, VA 22116-1030

Re: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Secretary:

I am providing the following comments regarding the current regulations proposed under the CAN-SPAM Act on behalf of ExactTarget, Inc. ExactTarget is a high-growth software company with over 3,000 clients worldwide. We provide online software for permission-based email communications, for clients ranging from members of the Fortune 500 to small- and medium-sized businesses. Given our role in the marketplace, we have a clear and compelling view of how legitimate businesses use commercial email in their everyday operations. Based on this perspective, we are writing to express serious concerns with further limitations on the opt-out processing period found in the CAN-SPAM Act.

Under the CAN-SPAM Act, the FTC has proposed reducing the processing period for opt out requests from ten to three days. In other words, companies sending commercial electronic mail messages must cease sending further messages within three days of receiving an opt out from a recipient. To be clear, our company -- indeed our entire industry -- is committed to respecting consumer requests not to receive commercial email. We stand in strong support of the Act's current ten day opt out requirement.

Reducing the current ten day period set under the CAN-SPAM Act to just three days, however, will create an impossible threshold for opt out processing in many common situations. One specific concern relates to the existing requirement to transfer opt out lists (suppression files) within and between organizations. This process alone can easily require more than three days for large organizations with highly-distributed operations, or between a marketer and a third party acting on their behalf. For example, many large organizations require that a marketing division "check out" an email list before it can be used for mailing purposes. Oftentimes this list is given to a service provider who may provide list hygiene, data appending, segmentation, and other email or list services before sending the communication. These hygiene and data manipulations may also take longer than three days. Under the proposed rules, this process would be mandated to be completed within three days. Certainly this is limiting beyond the scope intended by the proposed rule.

Mandating a three-day opt out processing period will unnecessarily put many well-intentioned companies out of compliance with the Act and impede the strategic use of email.

Another common example is with a distributed sales organization, like a national real estate company with representatives at remote locations who send commercial email on behalf of the company. Opt-outs received by individual representatives need to be honored by the entire company. Without a link to the corporate database, the representative cannot quickly or easily provide opt-outs back to the corporate database. The corporation can also not easily remove the names themselves, or communicate the change to other representatives to ensure the opt-out is honored. If a second

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representative were to send commercial mail to the consumer after the three-day period, that email would be out of compliance of the new rules. Certainly similar challenges exist with a ten-day standard, but they are **mitigated** in most situations by manual processes that may not be practical inside of three days. There are **countless** examples of franchises, or national retailers that could find themselves in similar situations, **especially** if they have disparate databases and processes.

Perhaps most importantly, we are aware of no evidence that would suggest consumers receive more commercial email during the opt-out period. I can confidently speak on behalf of all legitimate companies in the email industry in saying that an opt-out request is **not** seen as an opportunity to send spam for ten additional days. Legitimate marketers honor the opt-outs as soon as possible, often immediately – whereas spammers do not honor them at all.

For the reasons cited above, we strongly encourage you not to reduce the opt-out processing period set by the CAN-SPAM Act. Such a change would only harm legitimate businesses for whom the rule is designed to protect, rather than impede spam from the lawless individuals that choose to purposefully mislead and deceive consumers.

Thank you for taking time to read our objections to the proposed rules. We look forward to other rulemaking proposed in this session that clarifies the law and preserves legitimate **uses of the email** medium.

Sincerely,

Chip House
VP, Privacy & Deliverability
ExactTarget, Inc.